IN THE SUPREME COURT OF THE STATE OF NEVADA

TANAMERA COMMERCIAL DEVELOPMENT, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Appellant/Cross-Respondent,
vs.
D & L FRAMING, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Respondent/Cross-Appellant.

No. 45727

FILED

SEP 26 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [signature]
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal and cross-appeal from a district court amended judgment entered after a bench trial in a contract action. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

Appellant/cross-respondent Tanamera Commercial Development, LLC, argues that the damages and attorney fees awarded by the district court are inadequate in light of the district court's other findings. Respondent/cross-appellant D & L Framing, LLC, argues that the damages and attorney fees ordered by the district court are improper. We agree, in part, with Tanamera. The parties are familiar with the facts; therefore, we do not recount them in this order except as necessary for our disposition.

Standard of review

This court reviews questions of law and contract interpretation de novo.[1] However, the court defers to a district court's

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[1]Keife v. Logan, 119 Nev. 372, 374, 75 P.3d 357, 359 (2003); NGA #2 Ltd. Liab. Co. v. Rains, 113 Nev. 1151, 1158, 946 P.2d 163, 167 (1997).

findings of fact when they are supported by substantial evidence.[2] Substantial evidence is evidence that can reasonably be accepted as adequate to support a conclusion.[3]

The parties' agreement

"[W]hen a contract is clear, unambiguous, and complete, its terms must be given their plain meaning and the contract must be enforced as written; the court may not admit any other evidence of the parties' intent because the contract expresses their intent."[4]

In this case we conclude that the parties' agreement is unambiguous. It clearly entitles Tanamera to (1) unilaterally decide whether D&L's labor force, materials, or progress on the project are adequate; (2) remedy, at D&L's expense, any inadequacy after two days notice to D&L; and (3) terminate D&L without further notice. Here, the district court found that Tanamera followed that procedure when it terminated D&L as its framing subcontractor. But the district court added a requirement that Tanamera give an additional two-day notice that D&L would be terminated for failing to cure defects after it provided a two-day notice that those defects existed. Therefore, because the agreement between the parties did not require this additional notice, we reverse the district court's order to the extent that it found that Tanamera

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[2]Keife, 119 Nev. at 374, 75 P.3d at 359.

[3]Rio Suite Hotel & Casino v. Gorsky, 113 Nev. 600, 603-04, 939 P.2d 1043, 1045 (1997).

[4]Ringle v. Bruton, 120 Nev. 82, 93, 86 P.3d 1032, 1039 (2004).

had "not terminated [the agreement] in such a manner as to allow [it] to recover . . . prospective damages."

Damages

Based on the forgoing, we conclude that the district court erred by refusing to award Tanamera the prospective damages it incurred when it terminated the agreement with D&L and subcontracted with GFI, a replacement framing subcontractor. Those damages relate to the units that were within the scope of the agreement but that D&L had not yet started to build. Accordingly, we remand this case to the district court so it can calculate those damages.

As to the units D&L started but did not complete, the district court found that "[t]wenty-five percent (25%), or $233,138.25, of the $932,553.00 paid to GFI on a time and materials basis was attributable to D & L's defective and deficient work." We conclude that those findings are supported by substantial evidence and will not disturb them.

As to Tanamera's consequential damages, we have held that consequential damages can be awarded for a breach of contract when they are foreseeable, meaning it is fair and reasonable to consider them as arising naturally from the breach.[5] The purpose of delay damages is to "compensate a plaintiff for losses [it sustains] as a result of delays

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[5]See Clark County Sch. Dist. v. Rolling Plains, 117 Nev. 101, 106, 16 P.3d 1079, 1082 (2001), abrogated on other grounds by Sandy Valley Assocs. v. Sky Ranch Estates, 117 Nev. 948, 955 n.7, 35 P.3d 964, 969 n.7 (2001).

attributable to the defendant" and they are awardable given that they "are a foreseeable consequence of construction delays." [6]

In this case, the district court concluded that "D&L['s] breaches . . . caused Tanamera to incur damages as well as . . . additional costs and expenses to complete D&L's scope of work on the Project." However, it further found that D&L's breaches "do not support the delay damages sought by Tanamera" and denied Tanamera's claim for consequential damages. We conclude that the district court's order on this issue requires clarification. Therefore, we reverse the district court's order as it pertains to consequential damages and remand to the district court. On remand the district court should make detailed findings of fact and conclusions of law as to why Tanamera is not entitled to the delay damages that it suffered.

Attorney Fees

In Nevada, contract provisions providing for attorney fees are valid and enforceable.[7] Under the parties' agreement, the district court had discretion to award "such . . . attorney's fees as [the district court] . . . may deem proper." We will not disturb that award absent "a manifest abuse of discretion."[8] In Brunzell v. Golden Gate National Bank we

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[6]Colorado Environments v. Valley Grading, 105 Nev. 464, 471, 779 P.2d 80, 84 (1989); California Commercial v. Amedeo Vegas I, 119 Nev. 143, 146 n.5, 67 P.3d 328, 331 n.5 (2003).

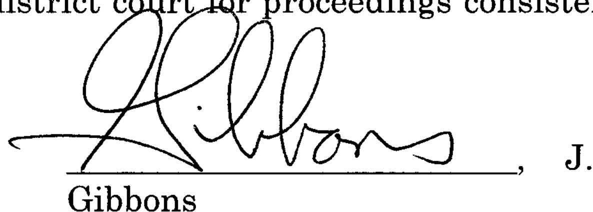
[7]Bates v. Chronister, 100 Nev. 675, 683, 691 P.2d 865, 871 (1984); NRS 18.010(1).

[8]County of Clark v. Blanchard Constr. Co., 98 Nev. 488, 492, 653 P.2d 1217, 1220 (1982).

concluded that the result of a case is a factor a district court should consider when calculating a reasonable attorney fee award.[9]

In this case, pursuant to the agreement, the district court awarded Tanamera only a portion of its attorney fees, reasoning that it had awarded Tanamera only a portion of the damages it alleged. Based upon this order, we remand the issue of attorneys' fees to the district court for further evaluation.

We have considered the parties' additional arguments and conclude that they lack merit. Accordingly, we ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.



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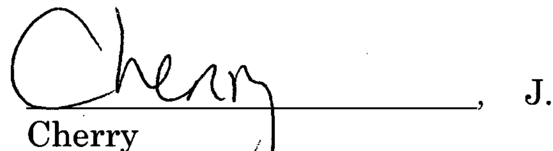
Gibbons



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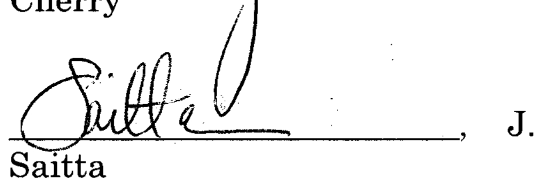

_______________________, J.
Saitta

cc: Hon. Mark R. Denton, District Judge
Carolyn Worrell, Settlement Judge
Goold, Patterson, Ales, Roadhouse & Day, Chtd.
McDonald Carano Wilson LLP/Las Vegas
Hale Lane Peek Dennison & Howard/Reno
Eighth District Court Clerk

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[9]85 Nev. 345, 455 P.2d 31 (1969).